

BILL ANALYSIS AND FISCAL IMPACT REPORT
Rick Homans, Secretary, Taxation and Revenue Department

December 9, 2009

Bill: 179344.2SA

Sponsor:

Related Bills:

Short Title: Oil and Gas Proceeds and Pass-Through Entity Withholding

Description: This bill would combine withholding on pass-through entities and oil and gas proceeds into the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act. This Act exempts residents, but prohibits nonresidents from avoiding withholding by “opting out” of withholding or having a New Mexico mailing address; makes the amounts of tax deducted and withheld under the Act payments of estimated tax; allows all costs deducted by a remitter or paid to a remitter for expenses related to production or cessation of production from a well to be taken into account when computing withholding on oil and gas proceeds; clarifies that withholding is based on the remittee’s net income, which is after all related deductions except the amount of income tax withheld; clarifies, but does not change, the withholding tax rates under the Act; makes trusts and estates that distribute income to beneficiaries pass-through entities for withholding purposes; removes the withholding obligation for single-member LLCs that are “disregarded entities” for federal income tax purposes; allows pass-through entities to base withholding on net income in the previous year if that year was a full year; sets a new threshold for withholding at \$30 per quarter, corresponding to nearly \$2,500 of annual income and equivalent to \$10 of withholding per month (the threshold for pension and annuity withholding); allows pass-through entities to agree with an owner that the owner will pay the amount that the pass-through entity would have been required to withhold and remit on behalf of the owner; adds definitions for several key terms, such as “net income” and “partnership”; removes the requirement for pass-through entities to withhold on net income of nonprofits or federal, state, local or tribal governments; and requires employers with more than 50 employees and who do not have a Department of Workforce Solutions filing requirement to electronically file an information return with TRD and the Workers’ Compensation Administration.

Effective Date: Tax years beginning on or after January 1, 2011.

Estimated Revenue Impact*							R or NR**	Fund(s) Affected
Provision	FY2010	FY2011	FY2012	FY2013	FY2014	FY 10- 14		
PTE WH Quarterly	0	11,100	600	500	600	12,800	R	General Fund
Compliance	0	4,500	9,200	9,600	9,900	33,200	R	General Fund
Total	0	15,600	9,800	10,100	10,500	46,000	R	General Fund

* In thousands of dollars. Parentheses () indicate a revenue loss. ** Recurring (R) or Non-Recurring (NR).

The revenue estimate is based on acceleration of PTE withholding (from annual to quarterly) and a compliance effect of 15% of forecast oil and gas proceeds and PTE withholding.

Policy Issues: The current rules allow non-residents to easily avoid paying New Mexico income tax, which is unfair to resident taxpayers.

Administrative Impact: Withholding from non-residents will lessen administrative costs associated with enforcing withholding requirements for taxpayers residing outside New Mexico.

This bill will require changes to the existing GenTax return as well as the creation of a new “informational” return. An estimated 250 hours would be required for return changes and a basic return reconciliation query.